STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS LIGHT COMPANY D/B/A Ameren/CILCO	)	
	)	No. 05-0160
Proposal to implement a competitive procurement Process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV	)	
CENTRAL ILLIONOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS	)	
	)	No. 05-0161
Proposal to implement a competitive procurement Process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV	)	
ILLINOIS POWER COMPANY d/b/a AmerenIP	)	
	)	No. 05-0162
Proposal to implement a competitive procurement Process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV	)	

DRAFT ORDER OF
OF THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois
By LISA MADIGAN, Attorney General

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By the Commission:

On February 28, 2005, Ameren CIPS, Ameren CILCO and Ameren IP (collectively referred to as Ameren or the Ameren Companies) filed the above-referenced tariffs with the Commission.

One of these tariffs, Rider MV, describes an auction-based process that Ameren plans to use, starting in 2007, to procure and price electricity to serve the 1.2 million jurisdictional retail customers in the Ameren service territories. *Rider MV, filed by Ameren with the Illinois Commerce Commission on February 28, 2005, ILL. C.C. No.*

18, Original Sheet No. 27 et seq.(Ameren Ex. 4.1). Ameren proposes to use the prices obtained through this auction process in its proposed Basic Generation Service (BGS) Rider, to provide "Customers with market priced power and energy." *Rider BGS, filed by Ameren with the Illinois Commerce Commission on February 28, 2005, ILL. C.C. No. 18, Original Sheet No. 22 (Purpose)(Ameren Ex. 5.1).* Ameren's tariffs state further that: "For each Billing Period, Customer shall pay for power and energy at prices defined in Rider MV and stated on the currently effective Retail Supply Charge Information Sheet." *Id. at Original Sheet No. 22.001.*

On March 9, 2005, the ICC opened this docket to conduct a hearing on "the propriety of the proposed tariff sheets to implement a competitive procurement process" and suspended Rider BGS, as well as the other tariffs proposed by Ameren pursuant to section 9-201 of the PUA. *Suspension Orders, ICC Docket No. 05-0160, 05-0161, 05-0162 (March 9, 2005).*

III. Legal Issues

B. ICC Authority under Article IX and Article XVI

Several parties[1] have challenged the Commission's authority to approve market-based rates for electric service that has not been declared competitive pursuant to Section

[1] The People of the State of Illinois, the Citizens Utility Board and the Environmental Law & Policy Center filed a Motion to Dismiss and a Petition for Interlocutory Review raising this issue in this docket. ICC Docket No. 05-0160-62 (consolidated), Motion to Dismiss by the People of the State of Illinois, the Citizens Utility Board and the Environmental Law and Policy Center, filed May 17, 2005; Petition for Interlocutory Review by the People, Citizens Utility Board and the Environmental Law and Policy Center, filed June 22, 2005. These parties are also challenging the Commission's authority to approve market-based rates for electric service that has not been declared competitive pursuant to Section 16-113 of the Public Utilities Act. People of the State of Illinois, Cook County State's Attorney, Citizens Utility Board and the Environmental Law and Policy Center v. Illinois Commerce Commission, Circuit Court of Cook County, No. 05 CH 14914. The IBEW and BOMA have also indicated support for this position. ICC Docket No. 05-0159 & 05-0160 (consolidated), Locals 15, 21 and 702 IBEW, AFL-CIO's Response to the Petition for Interlocutory Review, filed June 30, 2005; Tr. July 5, 2005 at 110-122. Similar action was taken in the Commonwealth Edison companion docket, ICC Docket 05-0159.

16-113 of the Public Utilities Act. These parties urge the Commission to dismiss Ameren's request for approval of Riders MV and BGS.

Position of the People of the State of Illinois, *et al.*

The People, *et al.* state that in 1997 the PUA was amended to allow the Commission to use "market based prices" to set utility rates for services that consumers have the option of purchasing from their utility's unregulated competitors and that have been "declared competitive" pursuant to §16-113 of the PUA:

> . . . Upon declaration of the provision of electric power and energy as competitive, the electric utility shall continue to offer to such customers, as a tariffed service, bundled service options at rates which reflect recovery of all cost components for providing the service. *For those components of the service which have been declared competitive, cost shall be the market based prices . . ..*

Electric Service Customer Choice and Rate Relief Law of 1997, P.A. 90-561 § 103(c), codified at 220 ILCS 5/16-103(c), emphasis added.

The People, *et al.* point out that the PUA authorizes the Commission to declare electric service "competitive" when comparable service is available from at least one non-utility supplier:

> The Commission shall declare the service to be a competitive service for some identifiable customer segment or group of customers, or some clearly defined geographical area within the electric utility's service area, if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group in the defined geographical area at a comparable price from one or more providers other than the electric utility or an affiliate of the electric utility, and the electric utility has lost or there is a reasonable likelihood that the electric utility will lose business for the service to the other provider or providers . . .

P.A. 90-561 § 113(a), codified at 220 ILCS 5/16-113(a).

The People, *et al.* note that over 1.2 million Ameren customers take retail electric service that has not been declared competitive. These customers do not have access to

competitive service offered by alternative retail electric suppliers. In most cases, their *only* option is to take service from their local utility at the rate charged by that utility.

The People, *et al.* conclude that the Ameren customers who do not have access to service that has been declared competitive are entitled to rates determined through regulatory review by the Commission -- and these customers will continue to be entitled to regulated rates until they have competitive choices and their rates are "regulated" by competitive forces in the market. The Commission cannot, therefore, approve the market-based rates contained in Rider CPP.

Position of Ameren, Electricity Suppliers and Staff

Ameren, *et al.* assert that Section 16-103(c) of the PUA does not apply in this case and, if it were to apply, that Section 16-103(c) does not limit use of market-based rates to only those customers who take electric service that has been "declared competitive" pursuant to Section 16-113 of the Act.

Ameren, *et al.* first argue that Subsection 16-103(c) sets forth a limited exception, allowing residential and small commercial retail customers – unlike all other customers – to obtain service from their existing public utility, even after the market is declared competitive. Under these circumstances, the utility is limited to charging these customers rates based on costs determined by market forces. Ameren *et al.* argue that Section 16-103(c) is not applicable to the facts of this case, where all parties agree that the relevant customer classes have not been declared competitive.

Ameren, *et al.* also argue that the People, *et al.* effectively rewrite the statute. They point out that the word "only" does not appear in Section 16-103(c). They note that a statute must be interpreted in accordance with the words that actually appear in a

provision, and provisions that do not appear may not be added. Based on this view, they reject a reading of Section 16-103(c) that limits use of market-based rates to only those customers who take electric service that has been declared competitive.

Commission Analysis and Conclusion

The construction of a statute is a question of law. *In re Estate of Dierkes*, 191 Ill.2d 326, 330, 246 Ill.Dec. 636, 730 N.E.2d 1101 (2000). The cardinal rule of statutory interpretation, to which all other rules are subordinate, is to ascertain and give effect to the intent of the legislature. *People v. Maggette*, 195 Ill.2d 336, 348, 254 Ill.Dec. 299, 747 N.E.2d 339 (2001). The best indication of legislative intent is the statutory language, given its plain meaning. *Illinois Graphics Co. v. Nickum*, 159 Ill.2d 469, 479, 203 Ill.Dec. 463, 639 N.E.2d 1282 (1994).

Section 16-103(c) provides that customers are entitled to continue receiving the same service that was offered before the 1997 amendments – at least until such time as their service is declared competitive. The last three sentences expressly authorize the use of "market based prices" to determine the costs which a utility is entitled to recover in rates charged for services that have been declared competitive. This section does *not* authorize the use of "market based prices" to determine the costs that a utility can recover for services that have *not* been declared competitive pursuant to Section 16-113 of the PUA – nor is there any other language in the PUA to that effect.

One rule of statutory construction that is clearly applicable in this case is summed up in the maxim e*xpressio unis est exclusion alterius (i.e.,* to express or include one thing implies the exclusion of the other, or of the alternative.) *Black's Law Dictionary 620 (8th ed.2004).* The Illinois Supreme Court notes that:

> This rule of statutory construction is based on logic and common sense. It expresses the learning of common experience that when people say one thing they do not mean something else. The maxim is closely related to the plain language rule in that it emphasizes the statutory language as it is written. 2A N. Singer, Sutherland on Statutory Construction § 47.24, at 228, § 47.25, at 234 (5th ed.1992).

Metzger v. DaRosa, 209 Ill.2d 30, 44, 282 Ill.Dec. 148, 805 N.E.2d 1165 (2004*).*

Applying this rule of statutory construction to Section 16-103(c) makes clear that this section authorizes "market based prices" only for service that has been declared competitive. The General Assembly's use of express language, in Section 16-103(c), to specifically authorize market-based rates for service that has been declared competitive indicates that the General Assembly intended to authorize market-based rates for service that has been declared competitive, *but not* for service that has not been declared competitive.

Ameren, *et al.'s* interpretation of Section 16-103(c) suggests that when the General Assembly expressly authorized market-based rates for service that has been declared competitive, that the General Assembly actually intended to authorize market-based rates for service that has not been declared competitive, as well. This interpretation ignores the "learning of common experience that when people say one thing they do not mean something else." *Metzger v. DaRosa* at 44. This interpretation of Section 16-103(c) defies logic and common sense and, as noted above, it is clearly contrary to a rule of statutory construction recently endorsed by the Illinois Supreme Court. When the rules of statutory construction and Illinois Supreme Court precedent are used to interpret Section 16-103(c), it is clear that this section authorizes market-based rates only for service that has been declared competitive.

Section 16-103(c) must be read to authorize market-based ratemaking *solely* for service that has been declared competitive. Any other interpretation would render meaningless the phrases "[u]pon declaration of the provision of electric power and energy as competitive . . ." and "[f]or those components of the service which have been declared competitive . . ." The Illinois courts have soundly rejected construction of statutes, including the PUA, that renders words or phrases superfluous. *See, Commonwealth Edison Co. v. Illinois Commerce Com'n* 332 Ill.App.3d 1038, 1051, 266 Ill.Dec. 551, 775 N.E.2d 113, (2 Dist., 2002) *citing A.P. Properties, Inc. v. Goshinsky,* 186 Ill.2d 524, 532, 239 Ill.Dec. 600, 714 N.E.2d 519 (1999) *(statute must be construed so that each word, clause, and sentence is given a reasonable meaning and not rendered superfluous).*

Accordingly, the Commission concludes that: (a) the PUA does not authorize market-based rates for electric service that has *not* been declared competitive; (b) Ameren customers who do not have access to service that has been declared competitive are entitled to rates determined through regulatory review by the Commission -- and these customers will continue to be entitled to regulated rates until they have competitive choices and their rates are "regulated" by competitive forces in the market; (c) a proposal such as Ameren's Rider BGS, that imposes market-based rates on captive customers, must be rejected as a matter of law; and (d) because the Commission lacks authority to approve market-based rates for service that has not been declared competitive, Rider BGS should be permanently canceled and annulled.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) Ameren CIPS, Ameren CILCO and Ameren IP are Illinois corporations engaged in the distribution and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) The Ameren companies' tariff proposal in this docket includes Rider BGS, which would establish market-based rates for electric service that has not been declared competitive pursuant to Section 16-113 of the Public Utilities Act;

(3) Section 16-103(c) authorizes the Commission to approve market-based rates only for electric service that has been declared competitive pursuant to Section 16-113 of the Public Utilities Act;

(4) The Ameren Companies' Rider BGS must be rejected as a matter of law because it seeks to impose market-based rates on customers who have not been declared competitive pursuant to Section 16-113 of the Public Utilities Act.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Rider BGS, filed by the Ameren Companies on February 28, 2005, is permanently cancelled and annulled.

IT IS FURTHER ORDERED that the Ameren Companies are authorized to file new tariff sheets, which will be reviewed in accordance with the findings in this order, 220 ILCS 5/9-101 and 9-201, and the other consumer protection provisions in Article IX and XVI that the 1997 Amendments to the Public Utilities Act expressly retained during the ongoing transition to a competitive retail electricity market.

IT IS FURTHER ORDERD that the Commission's continued exercise of its authority to set regulated rates for electric service that has not been declared competitive, pursuant to Articles IX and XVI of the Public Utilities Act, effectuates an extension of the transition period as the transition to competition continues.

IT IS FURTHER ORDERD that any motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FUTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

Respectfully submitted,

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